IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17891 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJESHKUMAR RAMESHCHANDRA RAO

Versus

GUJARAT POLLUTION CONTROL BOARD

Appearance:

1. Special Civil Application No. 17891 of 2003

MR YM THAKKAR,Advocate for Petitioner No. 1
MR KH BAXI, Advocate for Respondent No. 1
MS.MANISHA LAVKUMAR, AGP for Respondent No. 2
..... for Respondent No. 3

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 19/03/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.K.ABICHANDANI)

#. The petitioner seeks a direction on the respondent no. 2 to initiate appropriate proceedings against the responsible officers of the respondent no. 1-Board for not performing their statutory duties under the provisions of the Air (Prevention and Control of Pollution) Act, 1981. A direction is sought on the respondents for implementing the provisions of he Environment (Protection) Amendment Rules, 2001 and to prohibit all bricks manufacturers from manufacturing bricks by using moving chimney bull's trench kilns, as contemplated under the provisions of the Environment (Protection) Amendment Rules, 2001. Further direction is sought on the respondents to initiate appropriate proceedings under Section 37 of the Air Act, 1981 against defaulter manufacturers. The learned counsel for both the side are heard for final disposal of this petition.

#. It appears from the record that earlier, the petitioner had filed Special Civil Application No. 668 of 2003, which came to be disposed of by order of the Division Bench made on 15th July, 2003, a copy of which is at Annexure:A to the petition. That petition was also filed for the reliefs similar to those which are prayed for in the present petition. In para-3 of the order made by the Court, several statements which were being made by the learned counsel for the respondent-Board from time to time have been referred, including the statement made on 27th June, 2003 on behalf of the Board that a decision to effect the closure was taken and notices under Section 31-A were issued against the defaulters. In para-4 of the order, statement made by the learned counsel for the Board was recorded to the effect that the Board had passed closure orders under Section 31-A of the Act against 89 units on 11.7.2002 and had informed the Collector, Godhra, for cancellation of the lease of these units with immediate effect. The Court therefore noticed that the Board had started taking action against the concerned units. It was observed that such action could have been initiated without waiting for the orders of the Court. It was also observed that the illegal running of trench kilns on the agricultural land was going on since more than six years as averred by the petitioner and nothing was done by the respondents even though they were vested with the powers under the Act to prevent air pollution. The Court observed that it was expected from the respondents and more particularly from the respondent no. 1-Gujarat Pollution Control Board to prevent using

of moving chimneys on the agricultural fields which were discharging smoke that contained large amount of Carbon Monoxide, Carbon Dioxide and other poisonous particles and dust particles. With these observations, the Court disposed of the petition on 15.7.2003.

#. It appears that thereafter it is only on 15th January, 2004 that notices were given by the Board (copy at Annexure:VI to the affidavit-in-reply filed on behalf of the Board) in which defaulters were called upon under Section 31-A of the Air Act that they should immediately effect stoppage of the operation of the industrial plants mentioned therein till the fixed chimneys of adequate height and adequate air pollution control equipment are installed and efficiently operated and consent under the provisions of the Air Act,1987 is obtained. It was stated that if these directions were not complied forthwith, the noticee was liable for prosecution under section 37 of the Air Act which provided punishment with imprisonment of a term not less than one year and six months which could extend to six years with fine. We are told by the learned counsel for the Board that even after the issuance of the said notices dated 15.1.2004 to 541 units, not a single prosecution has been launched till today. Reasons which have been submitted for such omissions are hardly found to be convincing. However, in the file which was shown to us by the learned counsel appearing for the Board, admittedly no decision is recorded for prosecuting any particular unit pursuant to the notice dated 15.1.2004, though on 20th January, 2004, there was a noting made that as per advice of the advocate of the Board, filing of criminal cases under the Air Act was to be finalised. We may incidentally mention, since the original file was shown to us that, there are notings which show that the Regional Officers were not acting with responsibility. In the noting dated 24.11.2003, it was noted that the Regional Officer, Rajkot was not taking contents of the High Court order seriously as well as he was not aware of the responsibility entrusted by S.O. 763(E). Noting dated 17.1.2004 records that the R.O., Godhra was required to carry out inspection under the Act so as to take immediate action under the Act. Despite of all this, not a single prosecution appears to have been launched till now. It also appears from the file shown to us by the learned counsel of the Board that the Board had written a letter on 15th March, 2004 to the Regional Officer, Godhra which shows that inspection report made by him was wanting. Though we are not here pinpointing any particular lapse on the part of the officers concerned, the fact remains that there is inaction writ large on the

part of the Board officers and though notices were issued to as many as 541 units, by the Board on 15th January, 2004, as stated by its learned counsel, requiring stoppage of operation of industrial plants which were violating the provisions of the Act, no decision to prosecute any particular unit has been taken so far.

#. It is evident from the provisions of Section 37 of the said Act that the Parliament has enacted this provision with a view to effectively deal with the failure of compliance with the provisions of sections 21 or 22 or with the directions issued under Section 31-A. In cases where directions issued under Section 31-A are violated, minimum punishment prescribed is of one year and six months' imprisonment which may extend to six years and with fine, and in case the failure continues, with additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure. Despite the seriousness with which the Parliament has viewed these offences, it appears that the officers of the Board had adopted a lackadaisical attitude in implementing the provisions of the Act and the Board has not cared to take any departmental action against the erring officials.

#. We may note here that only the acts or omissions done in good faith in pursuance of the Act by the Board officials would get protection against suit, prosecution or other legal process and not any intentional illegal omissions on the part of the officials which may amount to abetment of the offences committed by any person under the Act or conspiracy to commit such offences. Participating in a crime would be punishable in accordance with law, be it by a public officer or a private citizen. If in a given case, a Board official whose duty it is to institute prosecution under the Act, intentionally abets continuance of the offence by illegally omitting to prosecute a person, he may become guilty of abetment of the offence if the ingredients of abetment, particularly of intentionally omitting to take action under the law and thereby abetting commission of the offence are established. We, however, leave it to the State Government and the Board to examine whether departmental actions were required to be taken against the erring officials who may appear to have committed lapses or misconduct in the discharge of their duties in view of the inaction noted hereinabove. We refrain from giving any direction in this regard in view of the statement made by the learned counsel on behalf of the Board that in cases where prosecution is warranted under the Act, a decision will be taken by the Board and the

prosecutions would be launched in appropriate cases within one month from today.

#. We may also note here that under Section 43 of the said Act, cognizance can be taken by the Court, not only on a complaint made by a Board or any person authorised in that behalf by it, but also on the basis of the complaint made by any person who has given notice of not less than sixty days in the manner prescribed, of the alleged offence and of his intention to make a complaint to the Board or officer authorized by the Board. Under sub-section (2) of Section 43, where a complaint has been made under section (b) of sub-section (1), the Board shall on demand by such person, make available relevant reports in its possession to that person unless it is in its opinion against public interest so to do. Therefore, it would be also open for a citizen when the Board fails to file a complaint in cases where offence is committed, to resort to the provisions of Section 43(1)(b) of the Air Act.

#. For the foregoing reasons, we direct the Board to take a decision as regards the prosecution of the units in cases where, according to the Board, offences under the Air Act are committed for breach of the directions issued under Section 31-A of the said Act by any of the units against whom notices were issued by the Board on 15.1.2004. The petition stands disposed of accordingly with no order as to costs.

[R.K. ABICHANDANI, J.]

[D.H. WAGHELA, J.]
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